

Raymond S. Hartman, Ph.D. Confidential - Attorneys' Eyes Only
 Volume II Boston, MA

October 8, 2004

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	618		620
1	information from the class counsel, have	1	they have been able to get this and been
2	you?	2	able to drive down these -- the price --
3	A. I have asked for a lot of information, and	3	the reimbursement rates toward the cost in
4	I can't recall whether I have asked for	4	the corroborative spread analysis that I
5	the patterns of contracts for named	5	have put together to date.
6	plaintiffs over time.	6	Q. Is there anything that prevents a
7	Q. Is there anything that has prevented a	7	third-party payer in the course of
8	third-party payer in the course of	8	negotiating with a PBM to say, "I want to
9	negotiating with a PBM to say, "I want	9	see your volume of purchases of these
10	complete transparency for rebates and	10	drugs and the dollar rebates and
11	administrative fees you get from a	11	administrative fees that you have received
12	manufacturer"?	12	because I want to do my own calculation"?
13	MR. SOBOL: Objection to the	13	MR. SOBOL: Objection. You can
14	form.	14	answer.
15	A. There is no doubt nothing that would	15	A. The bargaining positions of third-party
16	prevent anyone from asking for anything in	16	payers would certainly be conditioned on
17	a negotiation, from a trip to Vegas to a	17	the expectations of what was possible and
18	week on the Ile St. Louis in Paris. And	18	what the range of costs might be, and so
19	what --	19	what someone would ask for would be
20	Q. Do you think that is the kind of	20	conditioned on how badly they thought they
21	information -- let's put Paris aside for	21	were being gored.
22	the moment -- but do you think that	22	Now let's take into context just
	619		621
1	information about what a PBM's costs were	1	what you are saying. I don't see articles
2	is something that an inquisitive buyer	2	in the Drug Cost Management Reports in the
3	would want to know?	3	mid '90s saying we want to know your
4	A. I would think that a client, a perspective	4	costs. We're -- we're forming our own
5	client, submitting an RFP would ask for	5	PBMs. The price -- we are not getting
6	proposals in that RFP that would delineate	6	advantage of these, you are not sharing
7	what each PBM was willing to offer along	7	the rebates that you have negotiated with
8	the lines of what we see in the proforma	8	us.
9	contracts.	9	I am seeing that now, and so
10	Q. But --	10	there is nothing stopping them except the
11	A. And they would say, "I want all the	11	understanding of how badly they have been
12	information. Give me the information."	12	gored, and now I see that there is an
13	And all the contracts I'm seeing	13	understanding, and I see the behavior of
14	look very similar: AWP less a certain	14	exactly what you are asking for.
15	percent.	15	(Mr. Stempel exiting the
16	And so they could be screaming	16	deposition room at 5:14 p.m.)
17	for transparency, and the PBMs could be	17	Q. In connection with preparing your report,
18	saying, "This is transparent. What are	18	what steps have you taken to determine the
19	you talking about?"	19	extent to which PBMs compete against one
20	And there has been -- I am sure	20	another for third-party payer business?
21	these clients have been demanding that,	21	MR. SOBOL: Objection.
22	but there is obviously no evidence that	22	A. I have read the materials. I have looked

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	622		624
1	at -- I have been studying this market in	1	reimbursement rates to retail pharmacies?
2	connection with the litigation for the	2	A. I have seen no evidence that it has
3	past seven to ten years. I have discussed	3	allowed third-party payers to drive down
4	these issues with colleagues at the	4	reimbursement rates.
5	Harvard School of Public Health where	5	Q. And what have you looked at to arrive at
6	issues of competition of this sort and how	6	that conclusion?
7	it works in the market is common. And my	7	A. The materials that I have -- that I have
8	opinions are based on the sum of that,	8	already cited to you.
9	those analyses, that understanding, that	9	Q. I just wanted to make sure we are all
10	work.	10	using the same definitions. You have used
11	Q. What steps have you taken to determine the	11	the term "single source" and "multisource"
12	extent to which doctors compete against	12	today. Am I correct that when you use the
13	one another for third-party payer	13	term "single source" you are referring to
14	business?	14	a patented branded drug which nonetheless
15	A. That doctors compete for third-party payer	15	faces therapeutic competition?
16	business?	16	MR. SOBOL: Objection.
17	Q. Sure.	17	A. May or may not.
18	A. None to date.	18	MR. SOBOL: Objection.
19	Q. To what extent have you looked at the	19	A. That is correct.
20	extent --	20	MR. SOBOL: Objection to the
21	MR. CAVANAUGH: Strike that.	21	form.
22	Q. Have you looked at the extent to which	22	Q. And when you say "may or may not," it is
	623		625
1	retail pharmacies compete against one	1	because that single-source patented drug
2	another for third-party payer business?	2	may be in a therapeutic category in which
3	A. I have attempted to, and the information	3	it has no competitors or no
4	that I find is -- is anecdotal and quite	4	therapeutically-competitive drugs or there
5	limited.	5	may be any number of competitive drugs
6	Q. Based on this anecdotal data, what	6	within that category? Correct?
7	conclusions, if any, have you drawn?	7	A. I'm taking it to mean -- I am looking at
8	A. I have drawn the conclusion that it is in	8	-- I am taking as single source that there
9	the self-interest of certain retailers to	9	are no -- that the competition that exists
10	ally themselves with certain PBMs, and	10	is -- is not generic, if it exists at all.
11	that network formation has certain	11	Q. And when you use the term "multisource,"
12	economies of scale and scope that reflect	12	am I correct that what you are referring
13	how those networks are ultimately formed	13	to are instances in which the same
14	and who is members of which networks.	14	chemical compound is being sold by
15	Q. And do retail chains and independent	15	multiple companies?
16	pharmacies compete to get within those	16	A. As I said, it is when they are
17	networks?	17	bioequivalent -- when the competition is
18	A. There is a desire to be a part of a	18	on bioequivalence rather than on
19	network on the part of a retailer.	19	therapeutic similarities.
20	Q. As a result of that desire to get within a	20	Q. You are aware, of course, of instances in
21	network, has that allowed third-party	21	which you have a patented drug that is --
22	payers and PBMs to drive down	22	where that chemical compound is sold by

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	626	<p style="text-align: center;">CERTIFICATE Commonwealth of Massachusetts Plymouth, ss.</p> <p>I, Judith McGovern Williams, a Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, do hereby certify:</p> <p>That RAYMOND S. HARTMAN, Ph.D., the witness whose deposition is hereinbefore set forth, was duly sworn by me and that such deposition is a true record of the testimony given by the said witness.</p> <p>IN WITNESS WHEREOF, I have hereunto set my hand this day of , 2004.</p> <p>Judith McGovern Williams Registered Professional Reporter Certified Realtime Reporter Certified Shorthand Reporter No. 130993 My Commission expires: April 2, 2010</p>
1		MR. CAVANAUGH: Thank you.
2		MR. SOBOL: Thank you very much,
3		everybody.
4		THE WITNESS: No direct?
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	627	<p>MR. SOBOL: Not now. (Whereupon, at 5:20 p.m., the deposition was adjourned.)</p>
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